FARM CREDIT ADMINISTRATION
Washington, D. C.

SUMMARY OF CASES

RELATING TO

FARMERS' COOPERATIVE ASSOCIATIONS

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COOPERATIVE RESEARCH AND SERVICE DIVISION

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Table of Contents

SUPREME COURT HOLDS ASSOCIATION NOT IMMUNE
FROM PROSECUTION FOR CONSPIRING WITH OTHERS IN RESTRAINT OF TRADE

The Pure Milk Association, a cooperative association, of Chicago, and 13 other corporations and associations and 43 individuals, including several distributors of milk, were indicted in November 1938 for an alleged unlawful combination and conspiracy in restraint of interstate commerce in fluid milk, in violation of section 1 of the Sherman Act.

The association, having a membership in excess of 12,000 milk producers of whom approximately 50 percent were located outside of Illinois, was the sole and exclusive agent for marketing the milk of its members in Chicago. In excess of a million quarts of fluid milk were distributed and sold each day in the city of Chicago.

The defendants were charged in the four counts of the indictment with (1) fixing, maintaining, and controlling the prices to be paid fluid milk producers, (2) fixing and maintaining the prices at which fluid milk was to be sold by distributors to consumers in Chicago, (3) determining and controlling the distribution of fluid milk in Chicago, and (4) restraining, limiting, and controlling the supply of fluid milk moving in interstate commerce by means of the base surplus plan. Price fixing was the essence of the accusations.

The District Court held that the Pure Milk Association, as an agricultural cooperative association, its officers and agents, were exempt from prosecution under section 1 of the Sherman Act, 15 U.S.C.A., section 1, by section 6 of the Clayton Act, 15 U.S.C.A., section 17; sections 1 and 2 of the Capper-Volstead Act, 7 U.S.C.A., sections 291, 292; and the Agricultural Marketing Agreement Act of 1937, 7 U.S.C.A., section 671 et seq. It also held, as to all defendants, that the production and marketing of milk was removed from the purview of the Sherman Act by the Agricultural Marketing Agreement Act. The District Court therefore sustained demurrers and dismissed the indictment, and the Government exercised its exceptional right under the Criminal Appeals Act to appeal directly to the Supreme Court.

The Supreme Court quoted from and examined the opinion of the court below in considering the question of whether the Capper-Volstead Act and the Clayton Act had modified the Sherman Act so as to exempt the Pure Milk Association, its officers and agents, from prosecution under the Sherman Act indictment. The District Court had said in the language next herein quoted that, in its opinion, the Capper-Volstead Act "legalizes price fixing for those within its purview. To that extent it modifies the Sherman Act. It removes from the Sherman Act those organizations, cooperative in

their nature, which come within the purview of the Capper-Volstead Act. . . The [District] court deduces from the Capper-Volstead Act that the Secretary of Agriculture has exclusive jurisdiction to determine and order, in the first instance, whether or not farmer cooperatives, in their operation, monopolize and restrain interstate trade and commerce 'to such an extent that the price of any agricultural product is unduly enhanced.' Until the Secretary of Agriculture acts, the judicial power cannot be invoked. 28 F. Supp. at pages 183, 184."

That the foregoing view of the District Court was unacceptable to the Supreme Court is shown by the following excerpts from the opinion.

> ".....We cannot find in the Capper-Volstead Act.....an intention to declare immunity for the combinations and conspiracies charged in the present indictment. Section 6 of the Clayton Act, enacted in 1914, had authorized the formation and operation of agricultural organizations provided they did not have capital stock or were [not] conducted for profit, and it was there provided that the antitrust laws should not be construed to forbid members of such organizations 'from lawfully carrying out the legitimate objects thereof.' They were not to be held illegal combinations. The Capper-Volstead Act, enacted in 1922, was made applicable as well to cooperatives having capital stock. The persons to whom the Capper-Volstead Act applies are defined in Section one as producers of agricultural products, 'as farmers, planters, ranchmen, dairymen, nut or fruit growers.' They are authorized to act together 'in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce' their products. They may have 'marketing agencies in common,' and they may make 'the necessary contracts and agreements to effect such purposes.'
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> "The right of these agricultural producers thus to unite in preparing for market and in marketing their products, and to make the contracts which are necessary for that collaboration, cannot be deemed to authorize any combination or conspiracy with other persons in restraint of trade that these producers may see fit to devise. [Underscoring added.] In this instance, the conspiracy charged is not that of merely forming a collective association of producers to market their products but a conspiracy, or conspiracies, with major distributors and their allied groups, with labor officials, municipal officials, and others, in order to maintain artificial and non-competitive prices to be paid to all producers for all fluid milk produced in Illinois and neighboring States and marketed in the Chicago area, and thus in effect, as the

indictment is construed by the court below, 'to compel independent distributors to exact a like price from their customers' and also to control 'the supply of fluid milk permitted to be brought to Chicago.' 28 F. Supp. at pages 180-182. Such a combined attempt of all the defendants, producers, distributors and their allies, to control the market finds no justification in Section one of the Capper-Volstead Act.

"Nor does the court below derive its limitation of the Sherman Act from Section one [of the Capper-Volstead Act]. The pith of the court's conclusion is that under Section two [of the Capper-Volstead Act] an exclusive jurisdiction with respect to the described cooperative associations is vested, in the first instance, in the Secretary of Agriculture, and that, until the Secretary acts, the judicial power to entertain a prosecution under the Sherman Act cannot be invoked. Section two of the Capper-Volstead Act does provide a special procedure in a case where the Secretary of Agriculture has reason to believe that any such association 'monopolizes' or restrains interstate trade 'to such an extent that the price of any agricultural product is unduly enhanced.' Thereupon the Secretary is to serve upon the association a complaint, stating his charge with notice of hearing. And if upon such hearing the Secretary is of the opinion that the association 'monopolizes,' or does restrain interstate trade to the extent above mentioned, he then is to issue an order directing the association 'to cease and desist' therefrom. Provision is made for judicial review.

"We find no ground for saying that this limited procedure is a substitute for the provisions of the Sherman Act, or has the result of permitting the sort of combinations and conspiracies here charged [in the indictment] unless or until the Secretary of Agriculture takes action. That this provision of the Capper-Volstead Act does not cover the entire field of the Sherman Act is sufficiently clear. The Sherman Act authorizes criminal prosecutions and penalties. The Capper-Volstead Act provides only for a civil proceeding. The Sherman Act hits at attempts to monopolize as well as actual monopolization. And Section two of the Capper-Volstead Act contains no provision giving immunity from the Sherman Act in the absence of a proceeding by the Secretary. We think that the procedure under Section two of the Capper-Volstead Act is auxiliary and was intended merely as a qualification of the authorization given to cooperative agricultural producers by Section one, so that if the collective action of such producers, as there permitted, results in the opinion of the Secretary [of Agriculture] in monopolization or unduly enhanced prices, he may intervene and seek to control the action thus taken under

Section one. But as Section one cannot be regarded as authorizing the sort of conspiracies between producers and others that are charged in this indictment, the qualifying procedure for which Section two provides is not to be deemed to be designed to take the place of, or to postpone or prevent, prosecution under Section one of the Sherman Act for the purpose of punishing such conspiracies."

The District Court had dismissed the indictment as to all defendants (including the Pure Milk Association) because of the effect upon the Sherman Act which that court attributed to the Agricultural Marketing Agreement Act of 1937. Under the trial court's construction, that act per se destroyed the operation of section 1 of the Sherman Act with respect to the marketing of milk, whether or not the Secretary of Agriculture had undertaken to exercise his authority and power conferred by the act to enter into agreements and make orders.

Holding that the Agricultural Marketing Agreement Act is a limited statute with specific reference to particular transactions which are subject to regulation by the official action of the Secretary of Agriculture in the manner prescribed by the statute, and that the Sherman Act, a penal statute, is by contrast a broad enactment prohibiting unreasonable restraints upon interstate commerce and monopolization or attempts to monopolize, the Supreme Court said:

"We are of the opinion that this conclusion [of the District Court] is erroneous. No provision of that purport appears in the Agricultural [Marketing Agreement] Act. While effect is expressly given, as we shall see, to agreements and orders which may validly be made by the Secretary of Agriculture, there is no suggestion that in their absence, and apart from such qualified authorization and such requirements as they contain, the commerce in agricultural commodities is stripped of the safeguards set up by the Anti-Trust Act and is left open to the restraints, however unreasonable, which conspiring producers, distributors and their allies may see fit to impose. We are unable to find that such a grant of immunity by virtue of the inaction, or limited action, of the Secretary has any place in the statutory plan. We cannot believe that Congress intended to create 'so great a breach in historic remedies and sanctions.'

"It is a cardinal principle of construction that repeals by implication are not favored. When there are two acts upon the same subject the rule is to give effect to both if possible. [Cases cited.] The intention of the legislature to repeal 'must be clear and manifest.' ....."

"The Sherman Act is a broad enactment prohibiting unreasonable restraints upon interstate commerce, and monopolization or attempts to monopolize, with penal sanctions. The Agricultural Act is a limited statute with specific reference to particular transactions which may be regulated by official action in a prescribed manner. The Agricultural Act declares it to be the policy of Congress 'through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period' described. To carry out that policy a particular plan is set forth. Farmers and others are not permitted to resort to their own devices and to make any agreements or arrangements they desire, regardless of the restraints which may be inflicted upon commerce. The statutory program to be followed under the Agricultural Act requires the participation of the Secretary of Agriculture who is to hold hearings and make findings. The obvious intention is to provide for what may be found to be reasonable arrangements in particular instances and in the light of the circumstances disclosed. The methods which the Agricultural Act permits to attain that result are twofold, marketing agreements and orders. To give validity to marketing agreements the Secretary must be an actual party to the agreements. Section 8b. The orders are also to be made by the Secretary for the purpose of regulating the handling of the agricultural commodity to which the particular order relates. Section 8c(3)(4). That the field covered by the Agricultural Act is not coterminus with that covered by the Sherman Act is manifest from the fact that the former is thus delimited by the prescribed action participated in and directed by an officer of government proceeding under the authority specifically conferred by Congress. As to agreements and arrangements not thus agreed upon or directed by the Secretary, the Agricultural Act in no way impinges upon the prohibitions and penalties of the Sherman Act, and its condemnation of private action in entering into combinations and conspiracies which impose the prohibited restraint upon interstate commerce remains untouched."

. . . . . .

"An agreement made with the Secretary as a party, or an order made by him, or an arbitration award or agreement approved by him, pursuant to the authority conferred by the Agricultural Act and within the terms of the described immunity,

would of course be a defense to a prosecution under the Sherman Act to the extent that the prosecution sought to penalize what was thus validly agreed upon or directed by the Secretary. Further than that the Agricultural Act does not go."

Having determined by the foregoing reasoning that the cooperative association defendant (Pure Milk Association) was not immune under the Clayton Act and the Capper-Volstead Act from prosecution under the Sherman Act for alleged conspiracies with others, and that the Agricultural Marketing Agreement Act did not per se remove the marketing of milk from the scope of the Sherman Act, the Supreme Court reversed the judgment of the lower court and remanded the cause for further proceedings in conformity with its views herein set forth.

United States of America v. The Borden Company, et al., 60 Sup. Ct. 182, decided December 4, 1939, by the Supreme Court of the United States; reversing the same case in the District Court, 28 F. Supp. 177.

It is submitted that the Supreme Court of the United States in the foregoing case determines only that the Capper-Volstead Act has not conferred upon cooperative associations in their relationships with third persons any special rights, privileges, or immunities which are denied to other business entities. Under the Court's construction of the Capper-Volstead Act, the protection afforded thereby to farmers' cooperative associations meeting the terms and conditions of that act is limited to those activities of such associations in their relationships with third persons which are within the field of legitimate activities of other business concerns. The decision does not, of course, affect adversely the privilege of farmers to organize cooperative associations.

It would seem that United States v. The Borden Company may well be regarded as establishing the constitutionality of the Capper-Volstead Act.

The United States Supreme Court upheld the Agricultural Marketing Agreement Act of 1937 against constitutional objections in United States v. Rock-Royal Co-operative, Inc., et al., 59 Sup. Ct. 993, summarized in Summary No. 3 (September 1939(of this series.

In a case summarized in Summary No. 4 (December 1939) of this series, Hy-Grade Dairies v. Falls City Milk Producers Association, et al., 261 Ky. 25, 86 S.W.2nd 1046, the Court of Appeals of Kentucky said:

"A cooperative association cannot commit a tort even where its object in so doing is to attain the purpose for which it was legitimately formed, namely, the procurement of the highest possible price for the products of its members. It cannot be contended that a co-operative can by its activities close up or interfere with private business inimical to and standing in the way of accomplishment of its purposes and justify its acts by asserting that the end justifies the means and that a legitimate end legitimatizes acts which are inherently wrong. It seems obvious that co-operatives must attain their goal by economic pressure legitimately applied, and without resorting to practices and acts which, if committed by a less favored corporation or by private individuals, would not be countenanced by a court of equity."

In the same Summary (No. 4) reference is made to the opinion of the Supreme Court of Texas, in State v. Standard Oil Company, et al., 130 Tex. 313, 107 S.W.2nd 550:

"The Co-operative Marketing Act [of Texas] is comprehensive in its terms. It authorizes the creation of associations to carry out certain purposes. We hold that a corporation created under this act may do the legitimate things for which it is created. We do not assume that they will make contracts or adopt methods of carrying on their business in clear violation of the anti-trust laws."

ASSOCIATION AMENABLE TO SERVICE OF PROCESS IF DOING BUSINESS IN FOREIGN STATE

This suit was brought in Virginia against a Maryland cooperative association for the alleged breach of an executory contract of sale of 140 head of cattle. The defendant, Eastern Livestock Co-Operative Marketing Association, alleged it was not doing business in Virginia and hence could not be sued there, but the trial court found as a matter of fact that it was doing business there. Also, contending that it sold the cattle on commission as the agent of the plaintiff and that it was not itself the purchaser, the defendant association moved for a directed verdict in its favor, which was refused. Judgment was entered for the plaintiff against the defendant association for $3,954, after which the defendant appealed to the United States Circuit Court of Appeals.

The defendant association was not licensed to do business in Virginia, and had no office there nor any statutory agent authorized to accept service of process. Organized under the laws of Maryland, it was owned and controlled by about 4,000 farmer-members. Its principal business was the cooperative selling of livestock on

commission in terminal markets located at Baltimore, Lancaster, and Jersey City, although a few sales were from time to time consummated on the farms of its members.

In August 1937 the defendant's agent, who resided in Virginia, took Kressler, a cattle buyer from Pennsylvania, to the Virginia farm of the plaintiff, a cattle raiser, to see the latter's cattle. Subsequently an oral agreement was reached for the sale of the 140 head at determined prices, 40 to be taken out, weighed, and paid for during August, and the remaining 100 to be taken similarly prior to October 1. Near the end of August, 40 head were delivered and paid for. In the forepart of October, 40 more were similarly delivered and paid for. As a consequence of some delay on the plaintiff's part in getting the remaining 60 ready for shipment in pursuance of the buyer's order of October 11, the buyer maintained that he was thereby relieved from further liability under the contract. Consequently he failed to take the remaining 60 head. In the meantime the market price had fallen.

The questions presented to the Circuit Court of Appeals were (1) whether the defendant association was doing business in Virginia in such a manner and to such an extent as to warrant the inference that it was subject to the jurisdiction of the courts in Virginia, and (2) whether the defendant association purchased the cattle from the plaintiff (as charged in the complaint) for resale to Kressler or sold the cattle on commission to Kressler on behalf of and as the agent of the plaintiff.

In holding that the defendant association was doing business in Virginia so as to warrant the inference that it was present therein by its duly authorized officers or agents, the court said:

> "In the pending case there was not only a continuous solicitation by the resident agent of the shipment of cattle by Virginia producers to the out-of-state markets, but also assistance to the Virginia farmers in the preparation of their cattle for shipment, the purchase of cattle from time to time by the agent on the order of Virginia purchasers, followed by delivery of cattle within the State, and the sale to Virginia buyers of the cattle of out-of-state and local producers. Moreover, the agent entered into commission contracts of sale on behalf of the Association when he brought together the buyers and sellers of cattle, supervised the negotiations and consummation of contracts of sale between them, which were followed by delivery of the stock by the producers to the buyers within the State. The solicitation of shipments and the sales of cattle on commission for the producers constituted the main business of the Association, and the evidence shows

that these activities, as well as the sales of cattle by the agent in Virginia, took place over such a period of time and in such volume during the year in question as to imply the presence of the Association within the jurisdiction of the court. The promotion of local trade and the making of contracts on behalf of a foreign corporation by an agent within a State have been regarded by the courts as substantial evidence that it was doing business therein."

On the merits of the case the Circuit Court of Appeals, having found that the purchaser of the cattle was Kressler rather than the cooperative association, held that the trial court should have granted the motion of the defendant, Eastern Livestock Co-Operative Marketing Association, for a directed verdict. Accordingly the judgment of the trial court was reversed. It is interesting to note that in this instance a new trial was not ordered, but rather the case was "remanded with direction to enter judgment for the defendant." The court said:

"The evidence shows in addition to the facts set out above that the plaintiff received the active cooperation of the agents of the Association in obtaining a high price for the cattle bought by Kressler, and that a few days after the first shipment to Kressler the plaintiff, according to his own testimony, got a check from the Association for the cattle 'less $1 a head as agreed on for the commission for the load.' The account of sales accompanying and attached to the check designated Kressler as the purchaser and deducted $1 per head as a commission. Similar papers were received by the plaintiff with respect to the subsequent shipments. When these circumstances are considered, together with the improbability that a buyer would limit himself to a profit of $1 per head on cattle selling for approximately $140 per head, it is evident that a strong case for the defendant's contention, that the stock was sold by the plaintiff to Kressler, is made out.

". . . it had always been the practice of the Association in selling his [plaintiff's] stock on commission to assume responsibility for the payment of delivered goods, and to send its own check in settlement; and as we have shown, the check in this particular case when received showed on its face that Kressler was the buyer and that the Association was a commission agent."

Eastern Livestock Co-Operative Marketing Association, Inc., v. Dickenson, 107 F.2d 116, decided November 6, 1939, by the United States Circuit Court of Appeals, Fourth Circuit.

It should be noted that, as a general rule, if an incorporated cooperative association is occupying the position of plaintiff instead of defendant and is attempting to maintain a suit in a foreign State, the fact that it is doing business there without first having qualified under the laws of the foreign State would in many instances prevent it from maintaining the suit. See Nebraska Wheat Growers' Association v. Norquest et al., 113 Neb. 731, 204 N. W. 798.

In the case of Pacific Wool Growers v. Commissioner of Corporations, ___ Mass. ___, ___ N. E. ___, decided by the Supreme Judicial Court of Massachusetts in February 1940, it appeared that the petitioner cooperative association, being duly incorporated without capital stock under the laws of Oregon, had sought to file certain papers with the appropriate State official of Massachusetts so as to qualify to do business in that State. The Massachusetts statute relating to the qualification of foreign corporations required the applicant to state "the amount of its capital stock, authorized and issued." The State official, construing the statute as not applicable to associations incorporated without capital stock, refused to accept the papers of the Oregon cooperative. The association thereupon filed "a petition for mandamus to require the respondent [State official] to accept appointment as attorney for service of process for the petitioner [association], and also to accept and file its charter, bylaws and certain financial papers, together with a filing fee under the provisions of" the Massachusetts statute. The court held that the petitioner association was eligible for qualification under the Massachusetts statute, and ordered that a peremptory writ of mandamus issue of the State official requiring him to accept and file the papers of the Oregon association.

CITRUS FRUIT PACKING HOUSE EMPLOYEES OF COOPERATIVE HELD NOT TO BE AGRICULTURAL LABORERS

A United States Circuit Court of Appeals has determined that a cooperative association, under proper circumstances, is subject to the terms and provisions of the Wagner Act.

In pursuance of charges by the Citrus Packing House Workers Union, the National Labor Relations Board issued its complaint against the North Whittier Heights Citrus Association for alleged unfair practices in violation of the National Labor Relations [Wagner] Act, 29 U.S.C.A., section 151 et seq. The association moved before the Board to dismiss the proceeding upon the grounds (1) that its employees were agricultural laborers and therefore exempt under the act from the Board's jurisdiction and (2) that its operations did not directly burden or affect interstate or foreign commerce. After

a final order of the Board adverse to the association, the latter petitioned the United States Circuit Court of Appeals for the Ninth Circuit to review the proceedings and to set aside the final order.

The petitioner, North Whittier Heights Citrus Association, was a cooperative association incorporated under the California Agricultural Products Marketing Act, with a membership of about 200 citrus fruit growers. It received, handled, washed, graded, assembled, packed, and shipped the citrus fruit of its members and others for marketing. It had an agreement with the Semi-Tropic Fruit Exchange which in turn had an agreement with the California Fruit Growers Exchange. Under the direction of these marketing agencies practically all the citrus fruit handled by the association moved into interstate and foreign commerce. The association's packing house employees were generally persons residing at no great distance from the plant and most of them had worked there for many years. The work was seasonal and dependent upon fruit condition in orchard.

The evidence showed "acts attributable to the packing house management which tend to the conclusion that it was attempting to prevent the formation of the union." The evidence also showed that the plant, in which there were 118 workers, was closed for 10 days during August 1937; and that when operations were resumed the management failed to recall to work 27 of 32 employees who were known to have union affiliations or interests, while only 8 of the remaining nonunion employees were not recalled.

In rejecting the association's contention that its employees were agricultural laborers and were therefore specifically exempted from the provisions of the Wagner Act by its terms, the Circuit Court of Appeals said:

> "The production and marketing of citrus fruits in California have undergone changes as have various other activities in their transition from 'one man' affairs to 'big business.' The public regard for the product itself has changed from that of a pretty and tasty tidbit to that of a standard widely used fruit food. Large acreages, in fact large sections of the State of California, are devoted almost wholly to this horticultural product. In the early day everything connected with the product was done 'on the farm.' Experience produced better fruit, better fruit created greater demand, greater demand impelled system in handling. Possibly the most marked change in this transition was that of systematic marketing and uniformity in preparation for marketing, and these changes brought about the desirability of separating certain processes from the service of the 'farmer' to specialists. The farmer also learned through bitter experience that individual grove product sale to middlemen or through consignment

to independent fruit marketers resulted too often in ruin. The vast and comprehensive system which has been hereinbefore briefly alluded to was built up to adequately handle this large industry and to eliminate the practices which were so costly to the growers. Thus the growers themselves have separated from the farm, the work now done in the packing house and with which we are here concerned, and have assigned it to an incorporated organization brought into being by the growers for such particular purpose.

"We shall proceed to consider whether or not those employed in petitioner's packing house are 'agricultural laborers' and as such exempt under the Act from the Board's jurisdiction."

. . . . . .

"In Section 2, subdivision (3) of the Act it is provided that unless the Act explicitly states otherwise, the term 'employee' shall include 'any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice. . . . but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.'

". . . we find the Act specifically excepting three kinds of employees from its provisions. It would seem profitable to consider whether or not there is a 'common denominator' in these three exemptions. We think there is. Why is 'any individual employed by his parent or spouse' exempted? Because (not excluding other reasons) in this classification there never would be a great number suffering under the difficulty of negotiating with the actual employer and there would be no need for collective bargaining and conditions leading to strikes would not obtain. The same holds good as to 'domestic service,' and the same holds good as to 'agricultural laborer' if the term be not enlarged beyond the usual idea that the term suggests. Enlarge the meaning of any of these terms beyond their common usage and confusion results. When every detail of farming from plowing to delivering the produce to the consumer was done by the farmer and his 'hired man,' this common denominator was present. But when in the transition of citrus fruit growing from this independent action to the great industry of the present in which the fruit is passed from the individual grower through contract to a corporation for treatment in a packinghouse owned and run by such corporation, to be delivered by this corporation to an allied corporation for transportation and market, we think the common

denominator has ceased to exist. The fact that these corporations are allied through their membership of growers does not, in our opinion, affect the situation under consideration. . . ."

. . . . . .

"Industrial activity commonly means the treatment or processing of raw products in factories. When the product of the soil leaves the farmer, as such, and enters a factory for processing and marketing it has entered upon the status of 'industry.' In this status of this industry there would seem to be as much need for the remedial provisions of the Wagner Act, upon principle, as for any other industrial activity.

"Petitioner maintains that the nature of the work is the true test. Perhaps it would more nearly conform to the true test to say that the nature of the work modified by the custom of doing it determines whether the worker is or is not an agricultural laborer.

"Petitioner argues that if each member of the non-profit cooperative corporation that runs the packing house were to personally hire and direct those doing his own packing and sorting, the work would be agricultural and his employees would be agricultural laborers; that it follows, therefore, that in the case of the same members acting under a single organization to accomplish the same result there can be no change in the nature of the work nor in the status of the persons doing it. The conclusion does not follow. The factual change in the manner of accomplishing the same work is exactly what does change the status of those doing it. The premise laid down by petitioner in this phase of its argument is not, however, the exact situation facing us. The packing house activity is much more than the mere treatment of the fruit. When it reaches the packing house it is then in the practical control of a great selling organization which accounts to the individual farmer under the terms of the statute law and its own by-laws."

In holding that there was lack of merit in the petitioner association's contention that interstate commerce was not affected by its activity of grading and packing, the court said:

"At this late date it hardly seems necessary to devote a great deal of attention to this branch of the case. The facts show that the work done by the packing house is in every sense specialized factory work applied to fruit that has left the orchard. The major part of the fruit is moved directly by the

packing house workers, through the agency of two allied corporations, into the rail cars for prompt movement in interstate trade. Most certainly any considerable interference in such work would affect the free flow of interstate commerce. N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U. S. 41. . . ."

North Whittier Heights Citrus Association v. National Labor Relations Board, __ Fed. 2nd __, decided January 12, 1940, by the United States Circuit Court of Appeals, Ninth Circuit. In the same matter the proceedings before the Labor Board are cited as Case No. C-310. A summary of those proceedings appeared in Summary No. 2 (June 1939).

For other cases holding that persons employed in the handling and processing of agricultural products are not necessarily agricultural laborers, see H. Duys and Company v. Joseph M. Tone, Commissioner, 125 Conn. 300, 5 Atl. 2nd 23, and Great Western Mushroom Company v. Industrial Commission, 103 Colo. 39, 82 P. 2nd 751.

MEMBER SHOULD NOT BE HELD TO EXCLUSIVE MARKETING CONTRACT WHEN ASSOCIATION FAILS TO OFFER MARKETING FACILITIES

The plaintiff, who had been a member of the defendant association, brought an action to recover damages for an alleged breach of the marketing contract between the parties and to recover his membership fee of $300. The defendant was a cooperative farm marketing association organized under the laws of the State of Washington. As stated in the marketing agreement, the association was the sole marketing agency of all the produce grown by all its members. The association stated that because of the plaintiff's flagrant violations of the contract he had been tried and expelled from the association and his membership fee had been forfeited, in accordance with the marketing contract and the association's bylaws.

The evidence showed that there was, during the season in question, no market for onions. Plaintiff tendered his onions to the association for marketing, but it refused to accept them. Plaintiff then requested permission to sell his onions in the open market independent of the association, but this request was refused. The plaintiff's undisputed testimony was that the association notified other dealers in the immediate vicinity not to purchase from the plaintiff because he was a member of the association and a party to a marketing agreement which provided that members could market their produce only through the association.

The trial court found in favor of the defendant association; but upon an appeal by the plaintiff to the Supreme Court of Washington that judgment was reversed. The latter court considered the facts of the case and stated the principal question as follows:

"Where a cooperative marketing association such as this is unable to take and sell the crop of its member because of unfavorable market conditions, is such association justified in refusing to permit the member of the association to recoup his loss in so far as possible by peddling out his crop on the best terms obtainable?"

In answer to the foregoing question the Supreme Court of Washington said:

". . . this court [has] upheld the validity of contracts such as that involved here, and [has] held that an injunction will lie to prevent the grower from violating the terms of his contract. If an injunction will lie to compel the grower to deliver his produce to the association under a contract such as this, then it must necessarily follow that the association is compelled to accept such produce when it is tendered or show legal reason for failure so to do. We think the evidence in this case clearly shows, however, such legal reason, namely, that it was impossible for the association to market such produce at a price that would yield any return whatsoever to the grower. The evidence is clear that an attempt was made to market three carloads of onions and that the returns were insufficient to pay the cost of marketing. We think it is clear from the testimony that the association used its best endeavors to find a market for the onions, and that such endeavors were unavailing. We think, the market conditions being as they were, the association was justified in refusing to accept appellant's onions. He, however, requested permission to market his onions himself, and the testimony shows that at least one other grower peddled his onions at a price that to some extent at least permitted him to recoup his loss. The association refused to permit appellant to follow this course. He had gone to all of the expense of growing the onions, and the testimony clearly indicates that he would have been able to sell at least some of them at a price greater than the cost of harvesting. Since the association refused to permit him to recoup his loss, we think it breached the contract. . . . When the association refused to accept any portion of the crop, the grower was at liberty to sell such portion to any buyer he could find. . . . It cannot be the law that, where a crop has been produced ready for market, the marketing association, acting even in the best of faith, can say to the grower, 'We cannot sell your product, and you will not be permitted to sell it.' To permit this to be done would require the wanton waste of food products and would be contrary to public policy."

"We hold that, when respondent failed to accept appellant's onions when tendered, and refused to permit him to sell them himself, the contract was breached, and substantially breached.

". . . We think, however, that a substantial breach of the contract such as this justified appellant in withdrawing from the association, and that he is entitled to recover from the association his [membership] fee of $300."

Guglielmelli v. Walla Walla Gardeners' Ass'n, 157 Wash. 109, 288 P. 251.

See also Mountain States Beet Growers Marketing Association v. Monroe, 84 Colo. 300, 269 P. 886.